IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1098 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGATSINH GULABSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1098 of 1993
MR JM PANCHAL for Petitioner No. 1
MR JANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 15/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellants herein were tried by learned Additional Sessions Judge, Sabarkantha, at Himatnagar and convicted for offences punishable under Sections 447, 323 and 302 read with Section 34 of Indian Penal Code by judgment and order dated 6.9.1993 rendered in Sessions Case No.48 of 1992. They were sentenced to undergo imprisonment for life and to pay fine of Rs.500/- and, in default, to undergo further rigorous imprisonment for a period of one month for the offence punishable under Section 302 read with Section 34 of I.P.C. Simple imprisonment for three months was inflicted for the offence punishable under Sections 447 and 323 of I.P.C.

2. The facts of the case, ins a narrow compass, can be stated thus :

2.1 The appellants belong to village Vantada of Himatnagar taluka of Sabarkantha district. Adjoining to their field is the field of Lalusinh Bhatisinh Parmar. On the 21st February, 1992, at about 14.00 hours, the appellants were repairing the water canal in the field of Lalusinh Bhatisinh Parmar. Their going to the field and repairing the canal was objected to by Bai Shanti, wife of Lalusinh Bhatisinh Parmar, who was in company of her son Bhursinh Lalusinh Parmar. This gave rise to an altercation and, as per the prosecution case, accused No.2 caught hold of Bhursinh Lalusinh Parmar and accused No.1 inflicted spade blows on head of Bhursinh Lalusinh. Injury was also caused to Shantiben in this episode. Cries were raised and, therefore, neighbouring people rushed to the spot. A message was sent to Lalusinh Bhatisinh Parmar about the incident. He, therefore, immediately rushed from the place of his work in an auto-rickshaw to the place and took Bhursinh to village Gambhoi in that auto-rickshaw. From Gambhoi, he was taken to Himatnagar Civil Hospital in a Jeep Car. After primary treatment, Bhursinh was advised to be taken to Civil Hospital, at Ahmedabad and, therefore, he was being taken to Ahmedabad in an Ambulance. However, Bhursinh succumbed to the injuries on the way to Ahmedabad when the Ambulance was somewhere near village Chiloda. The dead body was, therefore, taken back to Himatnagar, where postmortem was performed.

2.2 While Bhursinh was being taken to Ahmedabad, Lalusinh Bhatisinh Parmar lodged a First Information Report with Himatnagar (Rural) Police Station, at about 3.20 P.M. on that very day. On basis of that F.I.R. an offence was registered and investigation was made. The police, having found sufficient evidence against the accused persons, filed charge sheet in the Court of

learned Chief Judicial Magistrate, Himatnagar, who, in turn, committed the case to the Court of Sessions, which was registered as Sessions Case No.48 of 1992.

2.3 The learned Additional Sessions Judge framed the charge at Ex.2 for the offences punishable under Sections 302 read with Section 34 and Sections 447, 504, 323 and 34 of Indian Penal Code. The accused persons pleaded not guilty to the charge and claimed to be tried. After considering the evidence led by the prosecution, the learned Additional Sessions Judge came to a conclusion that the prosecution could successfully establish the charges levelled against the accused persons and by the impugned judgment and order recorded conviction as stated above.

3. Learned advocate, Mr. Panchal, appearing for the appellants has taken us through the record and proceedings. His contention is that the Trial Court committed an error in appreciating the evidence. He submitted that the Trial Court ignored the fact that the incident would not have occurred but for its initiation at the hands of Shantiben or Bhursinh. There is nothing to indicate that any of the accused had gone with an intention of committing any offence. He submitted that, even if the prosecution case is taken at face value, it is a case where the incident started at the behest of the prosecution witnesses and none of the accused appellants was the aggressor. If the prosecution witnesses had not started the incident, the accused persons would have left the field after repairing the canal and nothing would have happened. Mr. Panchal submitted that, apart from this, the prosecution is not revealing the genesis of the incident correctly. The prosecution case mainly hangs on deposition of Shantiben, who has made improvements in her versions which are made to suit the requirement of the prosecution case and, therefore, the benefit ought to have been given to the appellants. Mr. Panchal submitted that accused-appellant No.2 has been falsely implicated. Initially, there was no case against him, but at a later point of time, it is suggested and developed as if he caught hold of the deceased and accused No.1 inflicted the fatal injuries. In fact, a complaint for non-cognizable offence has been registered by the accused also, which is prior in point of time. That indicates that accused No.2 had sustained injuries. This indicates that there was quarrel. Even according to the complainant, he initially received a message about a quarrel and not the assault. It also requires to be noted that there was a dispute between both the sides which had occurred about six months back and a settlement

was, admittedly, arrived at upon the intervention of the leaders of the village. That settlement was reduced into writing. Mr. Panchal submitted that, initially, the prosecution does not say anything about this. It is only at a later stage when it is specifically put to the witnesses that this aspect is admitted. Mr. Panchal, therefore, submitted that the witnesses are revealing only that part of the story which, according to them, is suitable for the prosecution. Reliance ought not to have been placed on such witnesses.

3.1 Mr. Panchal submitted that, in any event, admittedly, the incident occurred when the appellants were repairing the canal. Till then, there was no dispute. Then an objection was raised and there must have been an altercation. Admittedly, as per the deposition of the eye-witness, this had provoked the accused persons and the incident occurred wherein injuries were caused by accused No.1 with the spade, which is an agricultural implement which he was using for making canal at the time of the incident. Mr. Panchal submitted that it is not the case that the accused went there with some weapon or that on occurrence, accused found out a weapon and used it and, therefore, the case ought to have been considered under Section 304 of I.P.C. Mr. Panchal, therefore, submitted that the appeal deserves to be allowed and the appellants deserve to be acquitted by reversal of the judgment impugned herein. But, in the alternative, he submitted that the case may at least be considered for one under Section 304 Part II or Part I of I.P.C.

4. The appeal is opposed to by learned Additional Public Prosecutor, Mr. Jani. Mr. Jani submitted that the accused-appellants were the aggressors. They went to the field of the victim. They have used spade. Injuries were caused on head which are multiple in nature and accused No.2 also actively participated. To counter the contentions raised by learned advocate, Mr. Panchal, for the appellants that appellant No.2 has been wrongly roped in, Mr. Jani has drawn attention of this Court to the fact that sleeve of the shirt of appellant No.2 carried a blood stain of the group of the deceased, which would clearly establish his involvement and active participation in the incident. Mr. Jani submitted that the Court below has properly considered and appreciated the evidence in light of the established legal position and, therefore, the appeal may not be allowed.

5. We have gone through the record and proceedings and have considered the contentions raised before us.

6. The prosecution case mainly hangs on deposition of Shantiben Lalusinh, examined at Ex.13. She is the mother of the deceased and wife of the complainant. She is an eye-witness. The scrutiny of the deposition clearly indicates that the fields of the parties are situated adjacent to each other. There was some dispute between the parties prior to the incident and, therefore, an agreement was arrived at between the parties upon intervention of the leaders of the community. It was agreed that the complainant's side will permit the accused's side to have a canal for irrigation of the field of the accused and, against this, the accused's side will permit a right of way to the complainant's side. On the day of the incident, both the accused-appellants had gone to the field of the complainant, known as Sukhadiwadla Khetar for making a canal. This was objected to by Shantiben as the standing crop of Bajra was getting damaged. The witness says that, by this, both the accused were annoyed and got provoked and started giving abuses. Accused No.2 gave a slap to Shantiben and manhandled her. Accused No.1 gave two blows with spade on her back. She, therefore, raised hue and cry and in response, her daughter-Kailas and daughter-in-law Menaben arrived. Bhursinh was also there. He asked the assailants as to why were they beating Shantiben. Accused No.2, therefore, caught hold of him and accused No.2 inflicted blows with spade. In the cross-examination, the witness admits about the settlement which was not revealed by her in examination-in-chief. She also admits that she has not stated in her police statement that slap was given by accused No.2. She also admits that she has stated in her police statement that, after Bhursinh sustained injuries, she raised cries and, therefore, Kailasben, Menaben, Jaswantsinh Vajesinh and Rekhaben came. It is, therefore, very clear from the evidence of this witness that there was an agreement between the parties which permitted the accused side to draw water for irrigation from the canal in the field of the complainant's side and accused had gone with spade for that purpose to the field at the time of the incident. On objection being raised, there was verbal altercation, which resulted into provocation to both the accused, as stated by this witness in her examination-in-chief and in that, accused No.1, who was carrying the spade inflicted blows on the deceased.

7. The story of accused No.2 giving slap to Shantaben is an improvement in her deposition, as admitted by her.

7.1 It also requires to be noted that the witness has made some improvements in her story which do not call for any special attention being insignificant. However, fact remains that the incident started at the behest of the complainant's side, which resulted into provocation to the accused persons and accused No.1 caused fatal injuries to the deceased. In our view, therefore, there is total lack of evidence to indicate that the accused had intention of causing death of the deceased. The accused, therefore, could not have been convicted for the offence of murder. It is a clear case where accused persons entered the field for the purpose of repairing the canal, which can be accepted to be their bona fide belief for being entitled to do. There was altercation and, ultimately, the annoyance resulted into the incident which is initially described as a quarrel when complainant was in the field. This version is supported by the fact that accused No.2 had sustained injuries as per the medical evidence on record. There is nothing to indicate that the incident occurred with a premeditation, but it was a sudden fight and the blows were given in the heat of passion. Considering the nature of injuries and the manner in which it is caused in the above stated set of circumstances, in our opinion, the case cannot fall in the category of Part II of Section 304 of I.P.C.. but would fall under Part I of Section 304 of I.P.C., which is punishable with life imprisonment or imprisonment of either description for a term which may extend to 10 years ad shall also be liable to pay fine.

8. In our opinion, therefore, the appeal deserves to be allowed in part. The conviction of the appellants under Section 302 read with Section 34 of I.P.C. requires to be altered to one under Section 304, Part I of I.P.C. So far as other convictions are concerned, no interference is called for.

9. On question of quantum of punishment, Mr. Panchal contended that both the appellants come from a poor family. They have already undergone a sentence of about 10 years. There is none else in the family to support. There are no criminal antecedents and, therefore, minimum punishment may be inflicted.

10. It is true that none of the appellants have any criminal antecedents. They belong to agricultural class and, as discussed above, the incident has occurred on spur of the moment and, therefore, ends of justice would be met, if the appellants are sentenced to undergo rigorous imprisonment for a period of 10 years for the

offence punishable under Section 304, Part I read with Section 34 of I.P.C. They shall also a fine of Rs.500/and, in event of default in payment of fine, shall undergo rigorous imprisonment for a further period of one month. Since the conviction under Sections 447 and 323 of I.P.C. is not disturbed, there is no change in the sentence. The sentences shall run concurrently. The order of the Trial Court in respect ofl muddamal remains unchanged. Appeal is, accordingly, partly allowed.

[M.C. PATEL, J.]

[A. L. DAVE, J.]

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